

RECORDATION NO. 25041 FILED

JUL 07 '04 2-36 PM

SURFACE TRANSPORTATION BOARD

ALVORD AND ALVORD  
ATTORNEYS AT LAW  
1050 SEVENTEENTH STREET, N.W.  
SUITE 301  
WASHINGTON, D.C.

20036

(202) 393-2266

FAX (202) 393-2156

E-MAIL alvordlaw@aol.com

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

OF COUNSEL  
URBAN A. LESTER

July 7, 2004

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Memorandum of Mortgage, dated as of July 7, 2004, a primary document as defined in the Board's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed document are:

Debtor: Babcock & Brown Rail Funding LLC  
230 Park Avenue  
New York, NY 10169

[Secured Party: Bayerische Hypo-Und Vereinsbank AG, Agent  
FPA 4 Lease/Asset Finance  
Am Tucherpark 1 (FPA)  
80538 Munich  
Germany]

Mr. Vernon A. Williams  
July 7, 2004  
Page Two

A description of the railroad equipment covered by the enclosed document  
is:

300 railcars WEPX 3025 – WEPX 3324

A short summary of the document to appear in the index is:

Memorandum of Mortgage.

Also enclosed is a check in the amount of \$30.00 payable to the order of  
the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the  
undersigned.

Very truly yours.



Robert W. Alvord

RWA/anm  
Enclosures

RECORDATION NO. 25041 FILED

JUL 07 '04 2-36 PM

EXECUTION COPY

SURFACE TRANSPORTATION BOARD

**MEMORANDUM OF MORTGAGE**

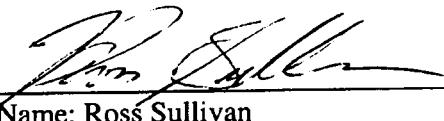
Memorandum of Mortgage, made and entered into as of July 7, 2004 between BABCOCK & BROWN RAIL FUNDING LLC (the "**Debtor**") and BAYERISCHE HYPO-UND VEREINSBANK AG, as Agent under the Security Agreement referred to below (together with its successors and permitted assigns, the "**Secured Party**"). Terms used in this instrument have the meanings assigned thereto in the Amended and Restated Security Agreement dated as of October 18, 2002 (as supplemented, including by Security Agreement Supplement No. 10 dated the date hereof, the "**Security Agreement**") between the Secured Party and the Debtor.

**WITNESSETH:**

The undersigned and the Secured Party have entered into the Security Agreement, by which the Debtor has granted a security interest in certain railroad equipment bearing reporting marks and road numbers as listed on Exhibit A attached hereto and in each lease referred to on Exhibit B attached hereto to the Secured Party in order to secure the Debtor's performance of its obligations as described in the Security Agreement.

IN WITNESS WHEREOF, the party hereto has caused this memorandum to be duly executed by its officer duly authorized as of the date and year first above written.

BABCOCK & BROWN RAIL FUNDING LLC

By   
Name: Ross Sullivan  
Title: Vice President

STATE OF CALIFORNIA           )  
                                          ) ss.:  
COUNTY OF SAN FRANCISCO   )

On the 7 day of July in the year 2004 before me personally came Ross Sullivan to me known, who, being by me duly sworn, did depose and say that he resides at 1090 Butterfield Road, San Anselmo, CA 94960; that he is the Vice President (duly appointed) of Babcock & Brown Rail Funding LLC, the limited liability company described in and which executed the above instrument; and that he signed his name thereto by authority of the officers of said limited liability company.



Heidi Wagner  
Notary Public

[Notarial Seal]

Memorandum of Mortgage

NEWYORK/136052.1

**Exhibit A  
to Memorandum of Mortgage**

**EQUIPMENT**

Lease #	# Cars	Year Built	Description	Reporting Marks	Casualty Marks
1	300	1998	4480 CF outside stake aluminum BethGon Coalporter railcars, 286,000 GRL, AAR car type code J311, built by Freight Car Services, Inc.	WEPX 3025 – WEPX 3324, inclusive	None

**Exhibit B**  
**to Memorandum of Mortgage**

**LIST OF LEASES AND OTHER OPERATIVE AGREEMENTS**

Lease #

1. Railcar Equipment Lease dated as of August 26, 1998, entered into by and between Banc of America Leasing & Capital, LLC (as ultimate assignee of JAIX Leasing Company) and Wisconsin Electric Power Company.

Rider 1 to Railcar Equipment Lease dated August 26, 1998, between Banc of America Leasing & Capital, LLC (as ultimate assignee of JAIX Leasing Company) and Wisconsin Electric Power Company.

First Amendment to Railcar Equipment Lease entered into as of January 18, 2001, between Banc of America Leasing & Capital, LLC and Wisconsin Electric Power Company.

Lease Extension Agreement dated as of July 7, 2004, between Babcock & Brown Rail Funding LLC and Wisconsin Electric Power Company.

Memorandum of Railcar Equipment Lease dated as of August 26, 1998, made by Banc of America Leasing & Capital, LLC (as ultimate assignee of JAIX Leasing Company) and Wisconsin Electric Power Company.

Warranty Bill of Sale dated September 30, 1998, from JAIX Leasing Company to Banc of America Leasing & Capital, LLC (as successor by merger to NationsBanc Leasing Corporation).

Assignment and Assumption Agreement dated September 30, 1998, between JAIX Leasing Company and Banc of America Leasing & Capital, LLC (as successor by merger to NationsBanc Leasing Corporation).

Memorandum of Assignment and Assumption Agreement dated as of September 30, 1998, made by JAIX Leasing Company and Banc of America Leasing & Capital, LLC (as successor by merger to NationsBanc Leasing Corporation).

Purchase and Sale Agreement made as of September 25, 1998, by and between JAIX Leasing Company and Banc of America Leasing & Capital, LLC (as successor by merger to NationsBanc Leasing Corporation).

Notice and Acknowledgment dated September 30, 1998, made by JAIX Leasing Company and NationsBanc Leasing Corporation to Wisconsin Electric Power Company.

Letter dated September 29, 1998 from JAIX Leasing Company addressed to Banc of America Leasing & Capital, LLC (as successor by merger to NationsBanc Leasing Corporation) regarding the purchase price of the cars.

Bill of Sale dated July 7, 2004 from Banc of America Leasing & Capital, LLC to Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

Purchase Agreement [BALC] dated as of July 7, 2004, between Banc of America Leasing & Capital, LLC and Babcock & Brown Rail Funding LLC, to the extent the same relates to the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

Assignment and Assumption Agreement, dated as of July 7, 2004, between Banc of America Leasing & Capital, LLC and Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

Notice and Acknowledgment dated June 30, 2004, made by Banc of America Leasing & Capital, LLC and Babcock & Brown Rail Funding LLC to Wisconsin Electric Power Company, in respect of the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

Notice Pursuant to Notice and Acknowledgment dated July 7, 2004, made by Babcock & Brown Rail Funding LLC and Banc of America Leasing & Capital, LLC to Wisconsin Electric Power Company, in respect of the Equipment described under the caption "Lease # 1" in Exhibit A hereto.

Side Letter dated July 7, 2004 from Babcock & Brown Rail Funding LLC addressed to Banc of America Leasing & Capital, LLC, in respect of the purchase price per unit of Equipment described under the caption "Lease # 1" in Exhibit A hereto.

Together with all substitutions, replacements and renewals of the property above described, and all property which shall hereafter become physically attached to or incorporated in the property above described, whether the Debtor now has rights therein or such rights shall hereafter be acquired by it.

**CERTIFICATION**

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: \_\_\_\_\_

7/7/04



\_\_\_\_\_  
Robert W. Alvord